

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRET T. CULVER,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1:01-CV-0904
	:	(Judge Kane)
COMMONWEALTH OF PENNSYLVANIA, <u>et al.</u>,	:	
	:	
	:	(Electronically Filed)
Defendants	:	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION TO COMPEL DISCOVERY**

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 alleging claims under the First, Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff, Brett Culver, is a prisoner currently incarcerated at SCI-Mahanoy. Defendants are several current or former SCI-Mahanoy and Department of Corrections ("DOC") employees.

In his complaint, Culver alleges that his legal documents were illegally confiscated and as a result he was denied access to the Court. He further claims that the defendants issued him false misconduct reports and subjected to retaliation and unjust punishment.

The Court ordered service of the complaint on December 19, 2001, and defendants answered the complaint on February 20, 2002. On March 3, 2002,

plaintiff served the defendants with several of sets of interrogatories. Defendants responded the interrogatories and produced relevant documents to the plaintiff on April 3, 2002.

On April 23, 2002, plaintiff filed a Motion to order defendants to comply with interrogatories requests. Defendants responded to Culver's motion to compel on May 6, 2002. On May 10, 2002, this Court denied Culver's motion for failure to file a brief in support of his motion as required by L.R. 7.5. Defendants filed a motion for summary judgment on May 9, 2003, and a supporting brief on May 22, 2003. On September 8, 2003, defendants received Culver's motion to compel discovery and supporting brief. This response is in opposition to Culver's motion to compel discovery.

QUESTION PRESENTED

**SHOULD THE COURT DENY CULVER'S
MOTION TO COMPEL DISCOVERY
WHERE THE DISCOVERY PERIOD IS
CLOSED?**

ARGUMENT

**THE COURT SHOULD DENY CULVER'S
MOTION TO COMPEL DISCOVERY AS
THE DISCOVERY PERIOD IS CLOSED**

In his motion and brief, Culver seeks to compel answers to interrogatories and document production requests that he submitted to the defendants on March, 2002. Defendants responded to interrogatories directed to Mooney, Shannon and Miknich and provided copies of documents relevant to the requests on April 3, 2002. On April 23, 2002, plaintiff filed a Motion to order defendants to comply with interrogatories requests. While Culver failed to file a supporting brief with that motion, defendants filed a brief in response to his motion on May 6, 2002. On May 10, 2002, the Court deemed Culver's motion withdrawn for failure to file a supporting brief.

Now, nearly sixteen months after the Court's order, Culver seeks to reopen discovery and compel answers to interrogatories and produce documents that he believes defendants continue to withhold. Culver did not file any motions with the

Court seeking an extension of the discovery period and incorrectly states that “the Court has not closed discovery in this case.” Pursuant to L.R. 26.4, discovery in this case has been closed for months.

Culver, as the moving party, bears the burden of demonstrating he is entitled to the relief he now seeks. Compagnie des Bauxites de Guinee v. Insurance Company of North America, 551 F. Supp. 1239, 1243 (W.D. Pa. 1982). In this situation, this means that Culver must show that he has made permissible discovery requests and that defendants have unjustifiably declined to provide him with what he seeks. Moreover, Culver has presented no compelling reason why discovery in this case should be reopened. He has not done so in his motion and brief cannot otherwise do so.

Finally, the Court should not be misled to believe defendants have not provided plaintiff with information responsive to his requests. To the contrary, a review of Culver’s requests and defendants’ answers reveal that information was provided to him regarding the April 13, 2000 and September 18, 2000 misconducts, which are at issue in his complaint. The documents concerning these misconducts have been provided to the plaintiff, as well as information and documentation concerning relevant grievances, the video recording system at SCI-Mahanoy and the defendants work schedules during the relevant time period. In addition, any

relevant correspondence that has been located concerning his claim has been provided to him. (*See* Exhibits A-C).

Culver's untimely motion and brief contain nothing more than vague statements alleging that defendants "refusal to answer the interrogatories had no substantial justification and has hindered the proceedings." Defendants have no idea what information Culver is seeking in addition to that provided. In this case, discovery is closed, dispositive motions are pending and Culver received relevant information and documentation regarding his discovery requests. Therefore, the Court should deny plaintiff's motion to compel discovery as untimely and without merit.

CONCLUSION

For these reasons, the plaintiff's motion to compel discovery should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: s/ Maryanne M. Lewis
MARYANNE M. LEWIS
Deputy Attorney General
Attorney ID# 82813

SUSAN J. FORNEY
Chief Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg PA 17120
(717) 787-9719
(717) 772-4526 FAX
mlewis@attorneygeneral.gov
DATE: September 29, 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRET T. CULVER,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1:01-CV-0904
	:	(Judge Kane)
COMMONWEALTH OF	:	(Electronically Filed)
PENNSYLVANIA, <u>et al.</u>,	:	

CERTIFICATE OF SERVICE

I, Maryanne M. Lewis, Deputy Attorney General, hereby certify that on this date I caused to be served the foregoing **Defendants' Response to Plaintiff's Motion to Compel Discovery**, by depositing a copy of the same in the United States mail, postage prepaid, in Harrisburg, PA., addressed to the following:

**Brett T. Culver, #DD 3483
SCI-Mahanoy
301 Morea Rd.
Frackville, PA 17932**

s/Maryanne M. Lewis
MARYANNE M. LEWIS
DEPUTY ATTORNEY GENERAL

DATE: September 29, 2003